

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

EDMIN ALICEA,

Plaintiff,

-against-

THE CITY OF NEW YORK,
POLICE OFFICER ALEJANDRO RIVAS (TAX 925987),
DETECTIVE RICHARD BABOOLAL (TAX 924906),
POLICE SERGEANT FREDY CRUZ (TAX 915528),
POLICE OFFICER PAUL ARICO (TAX 903358),
POLICE OFFICER TERRENCE MCGRATH (TAX 924169)
and POLICE OFFICER BRENDAN REGAN (TAX 904868),

Defendants.

Case Number: 13 CV 7073 (JGK) (GWG)

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26 Court Street
Brooklyn, New York

January 7, 2015
11:25 a.m.

EXAMINATION BEFORE TRIAL of Defendant PAUL
ARICO, taken by the Plaintiff, held at the above
time and place, before Joseph Adler, a Stenotype
Reporter and Notary Public of the State of New York,
pursuant to Notice and Stipulations between counsel.

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A P P E A R A N C E S:

REIBMAN & WEINER, ESQS.
Attorneys for the Plaintiff
26 Court Street, Suite 1808
Brooklyn, New York 11242
BY: JESSICA MASSIMI, ESQ.

NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL
Attorneys for the Defendants
100 Church Street
New York, New York 10007
BY: BRIAN J. FARRAR, ESQ.

1 ARICO

2 Q As a police officer, do you have a duty to
3 preserve evidence of a crime?

4 MR. FARRAR: Objection.

5 A Yes, you do.

6 Q As a police officer, do you have a duty to
7 preserve drugs which you believe are in possession
8 of an arrestee?

9 A Yes, you do.

10 Q When you arrested Mr. Alicea on March 27,
11 2012, did you believe that he was in possession of
12 drugs?

13 MR. FARRAR: Objection.

14 A I did not arrest Mr. Alicea.

15 Q Were you present for his arrest?

16 A I don't recall.

17 Q Officer, I am just going to ask you to
18 take a look at this document, and just let me know
19 when you are finished.

20 A Okay.

21 Q I have just handed you documents that your
22 attorneys produced, which are marked Defense 131 and
23 132. Can you please tell me what that document is?

24 A This is my memo book entries, my memo book
25 and my memo book entries for 3/27/12.

1 ARICO

2 MS. MASSIMI: Can you just mark this?

3 (Memo Book Entries were marked
4 as Plaintiff's Exhibit 2 for
5 identification, as of this
6 date.)

7 Q We have just had that document marked as
8 Plaintiff's Exhibit 2. Officer, please just read
9 all of the entries that are part of this exhibit,
10 including the time entries, and if there are
11 abbreviations, read the abbreviations, and then tell
12 me what they stand for.

13 A Tuesday, 3/27, tour, ten to six,
14 assignment, Conditions. 0930, PFD, which is present
15 for duty. 11:00 o'clock, 98, which means I'm out on
16 patrol in 590, which is a vehicle, with Regan,
17 McGrath, and Rivas. 1500, PC, which is a post
18 change to auxiliary. 1805, end of a tour, EOT, and
19 then my signature. Keep going?

20 Q Yes. The whole thing.

21 A Wednesday, 3/28, tour, ten to six,
22 assignment, auxiliary. 1130, LT, which is lost
23 time. Up front, present for duty, PFD. 12:00
24 o'clock, 62 administrative, 62 ASH, which is 62
25 administrative station house. 1805, end of tour and

1 ARICO

2 then my signature.

3 Q The entry from Tuesday the 27th at 1500
4 hours, what does that say?

5 A PC, post change.

6 Q To auxiliary?

7 A That is correct.

8 Q What does that indicate?

9 A That at 1500 I was done with my Conditions
10 thing, and I post changed to auxiliary, my auxiliary
11 coordinator spot.

12 Q In the 1100 entry, what does that entire
13 entry indicate?

14 A 1100 is when I went out in a vehicle 590
15 with Officer Regan, McGrath, and Officer Rivas.

16 Q The four of you were all in the same
17 vehicle?

18 A Correct.

19 Q Were you all in the same vehicle until
20 your post changed at 1500 hours?

21 A I don't recall.

22 Q Did you ever split off from Regan,
23 McGrath, and Rivas before your post changed?

24 A I don't recall.

25 Q You were on duty on March 27, 2012,

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2 correct?

3 A Correct.

4 Q What tour were you working?

5 A 0930 by 1805, commonly known as a ten to
6 six.

7 Q When was the last tour you worked before
8 that tour?

9 A My RDOs are Sunday, Monday, so it would
10 have been Saturday.

11 Q What are RDOs?

12 A Regular days off.

13 Q What were your responsibilities during
14 your tour on March 27, 2012?

15 MR. FARRAR: Objection.

16 A For the beginning part of the day, I was
17 with the Conditions Unit, and for the latter part of
18 the day, I was with the auxiliary.

19 Q Had you worked those assignments before?

20 A Yes, I had.

21 Q You were briefed at the beginning of your
22 tour?

23 A I'm sorry?

24 Q Were you briefed at the beginning of your
25 tour?

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2 A Briefed by --

3 Q Do you have a supervisor?

4 A Yes, I do.

5 Q Do they ever give you instructions at the
6 beginning of your shift for the day?

7 MR. FARRAR: Objection.

8 A Yes, they do.

9 Q Did you receive any instructions at the
10 beginning of your shift on that day?

11 A I don't recall.

12 Q Explain to me what you were doing with
13 Officers Regan, McGrath, and Rivas that day starting
14 from the moment when you first saw them at the
15 precinct.

16 MR. FARRAR: Objection.

17 A I don't remember exactly when I saw them.
18 I came in at 0930. I would have done some
19 administrative work and then suited up and then went
20 out on patrol about 11:00 o'clock, at 11:00 o'clock.

21 Q What happened when you went on patrol?

22 A I don't understand your question.

23 Q What did you do? What was the first thing
24 you did when you were on patrol with those other
25 officers?

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2 A I don't recall.

3 Q Where were you sitting in the vehicle?

4 A I'm sorry; I don't recall.

5 Q Who was driving the vehicle?

6 A I don't recall that either.

7 Q Was it typical for four officers to patrol
8 in the same vehicle?

9 A Not usually.

10 Q Why would there have been four officers
11 patrolling in the same vehicle that day?

12 MR. FARRAR: Objection.

13 A There might not have been vehicles -- any
14 other vehicles available at that time.

15 (A recess was taken.)

16 (Requested testimony was read.)

17 Q The memo book entry that you have at 1100
18 hours states that you went out on patrol with Regan,
19 McGrath, and Rivas, correct?

20 A Correct.

21 Q Then your next memo book entry is six
22 hours later, correct?

23 A No.

24 Q I am sorry. Am I missing something? When
25 is your next memo book entry?

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2 A 1500, 3:00 o'clock in the afternoon.

3 Q It is four hours later, correct?

4 A Correct.

5 Q Sorry.

6 A That's all right.

7 Q What did you do during those four hours?

8 MR. FARRAR: Objection.

9 A I was on patrol with the Conditions team.

10 Q Do you remember making any arrests?

11 A No, I do not.

12 Q Do you remember stopping anyone?

13 A No, I don't.

14 Q Do you have an independent recollection of
15 anything that happened during that four-hour period
16 between 1100 hours and 1500 hours?

17 A No, I don't. I wish I did. No.

18 Q I am going to show you what has been
19 marked as Plaintiff's Exhibit 1 for Officer
20 McGrath's deposition, and I am just going to show
21 this to you and ask you to read it, and let me know
22 when you are done.

23 A Okay.

24 Q You have had a chance to review
25 Plaintiff's Exhibit 1, which is Officer McGrath's

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2 memo book entries for March 27, 2012, correct?

3 A Correct.

4 Q You have read the entries from 1100 to
5 1550, correct?

6 A Correct.

7 Q Were you present for any of the activity
8 that is indicated in Officer McGrath's memo book for
9 that period of time?

10 MR. FARRAR: Objection.

11 A I don't recall.

12 (A recess was taken.)

13 Q Officer, I am now going to show you
14 Plaintiff's Exhibit 2 from Officer Rivas's
15 deposition on August 19, 2014. Can you just take a
16 look at that, and let me know when you have had a
17 chance to review it?

18 A Okay.

19 Q These are documents which were produced by
20 your attorney, and they are labeled Defense
21 Production 50, 51, and 52, and as I said earlier,
22 they have already been marked as Plaintiff's Exhibit
23 2 as of August 19, 2014. Can you just read out
24 loud, if you can, these entries?

25 A That says 3/27/12, 33rd Precinct, 0930 by

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2 1805. 0930, present for duty. It looks like C
3 equals R. M equals, M equals. I can't read the
4 next post. Equals Condition. PO Arico, PO McGrath,
5 PO Regan. It says something results, negative
6 results. I can't read the next couple words. 1335,
7 one under. Alicea, Edwin [sic], MH, which is a male
8 Hispanic, and I can't read the next line. 1400,
9 confirmed ID at 33rd Precinct. Looks like 1430.
10 OLBS processing. 1550, fingerprint processing.
11 1845, voucher. And then the last -- I can't read
12 the last time. It looks like 0001 EOT and then a
13 signature.

14 Q Does any of that refresh your recollection
15 about what you might have been doing on March 27,
16 2012 between 1100 and 1500 hours?

17 A No, it does not.

18 Q Officer, I am going to ask you to take a
19 look at another document, which has previously been
20 marked as Plaintiff's Exhibit 1 from Officer
21 Baboolal's deposition on August 21, 2014, and they
22 are documents that were produced by your attorney
23 bearing stamp Nos. Defense Production 59 and 60.
24 Please just take a look at those documents, and let
25 me know when you are finished.

1 ARICO

2 A Okay.

3 Q You have just taken a look at what is
4 Officer Baboolal's memo book entries for the date in
5 question, and does the information contained in this
6 memo book at all refresh your recollection about
7 what you might have been doing between 1100 and 1500
8 hours on March 27, 2012?

9 A No, it does not. Unfortunately this
10 incident happened over three years ago, almost three
11 years ago now, and I don't have any recollection.
12 I'm sorry.

13 Q Officer, I am now going to show you what
14 has been previously marked as Plaintiff's Exhibit 3
15 from Officer Rivas's deposition on August 19, 2014,
16 and it is a document that was previously produced by
17 your attorney bearing stamp No. Defense Production
18 6. Can you please just look at this document, and
19 let me know when you are finished?

20 A Okay.

21 Q Have you had a chance to review this
22 document --

23 A Yes, I have.

24 Q -- which has been marked as Plaintiff's
25 Exhibit 3 from August 19, 2014? What is this

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document?

A This is the affidavit that the assistant district attorney would draw up and the arresting officer would swear to and sign off on.

Q From what you could read here, is this the criminal complaint for the plaintiff in this case?

A Yes, it is.

Q Having read it, does this at all refresh your recollection about what you might have been doing between 1100 and 1500 hours on March 27, 2012?

A No, it does not.

Q Do you remember arresting somebody for attempted tampering with physical evidence on March 27, 2012?

A No, I do not.

Q Do you recall observing anyone swallowing marijuana on March 27, 2012?

A No, I do not.

Q Do you recall arresting somebody for allegedly swallowing marijuana on March 27, 2012?

A I did not make any arrests on that date.

Q Do you recall being present for any arrests of individuals for swallowing marijuana on March 27, 2012?

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2 A No, I do not.

3 Q Do you recall observing any alleged drug
4 transactions on March 27, 2012?

5 A No, I do not.

6 Q Do you recall being present for any
7 arrests on March 27, 2012?

8 A No. Like I said, this happened almost
9 three years ago, and I don't. I'm sorry.

10 Q Do you recall observing any hand-to-hand
11 transactions on March 27, 2012?

12 A No, I do not.

13 Q Do you recall discussing with Officer
14 Rivas any hand-to-hand transactions that occurred on
15 March 27, 2012?

16 A What was your question?

17 MS. MASSIMI: Could you read it back?

18 (Requested testimony was read.)

19 A No, I do not.

20 Q Do you recall discussing with Officer
21 Rivas at any point any arrests that occurred on
22 March 27, 2012 for attempted tampering with physical
23 evidence?

24 A From that date? Are you asking me on that
25 date did I have any discussions with him?

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2 Q At any point including on that date, did
3 you have any discussions with Officer Rivas about
4 arrests on that date regarding attempted tampering
5 with physical evidence?

6 A Yes, we spoke. I spoke to him in regards
7 to this -- in regards to the -- the lawsuit and --
8 hoping it would refresh my recollection, but it did
9 not.

10 Q Do you remember having any conversations
11 on March 27, 2012 with Officer Rivas regarding
12 arrests made for attempted tampering with physical
13 evidence?

14 A On the date in question?

15 Q Yes.

16 A No, I do not.

17 Q Do you remember having any conversation
18 with Richard Baboolal about attempted tampering of
19 physical evidence, arrests made for attempted
20 tampering of physical evidence on March 27, 2012?

21 A On that specific date?

22 Q Yes.

23 A No, I do not.

24 Q What about the dates following that?

25 A Yeah. When we were served with papers for

1 ARICO

2 the lawsuit to see if it would help refresh my
3 recollection but it did not.

4 Q Did you ever discuss with Sergeant Fredy
5 Cruz, Terrence McGrath, or Brendan Regan any arrests
6 made on March 27, 2012 for attempted tampering with
7 physical evidence?

8 MR. FARRAR: Objection.

9 A Again, also on that date in question? No,
10 I do not recall.

11 (A recess was taken.)

12 Q Can you just take a look at the documents
13 I have just handed to you, which have been produced
14 by your attorney, bearing stamp Nos. Defense
15 Production 128 to 130?

16 A Okay.

17 Q Have you had a chance to review that
18 document?

19 A Yes.

20 MS. MASSIMI: Can you just mark this?

21 (Memo Book Entries were marked
22 as Plaintiff's Exhibit 3 for
23 identification, as of this
24 date.)

25 Q Officer, you have had a chance to review

ARICO

this document. Would you agree that this is Officer Regan's memo book entries from March 27, 2012?

A Yes.

Q Does anything contained in this document refresh your recollection about what you might have been doing on March 27, 2012 between 1100 and 1500 hours?

A No, it does not.

Q Did you observe Mr. Alicea's conduct at the scene of his arrest on March 27, 2012?

MR. FARRAR: Objection.

A I don't recall.

Q Do you recall conducting an investigation at the scene of the arrest on March 27, 2012?

MR. FARRAR: Objection.

A I don't recall.

Q Do you recall when the last time was that you saw Officer Rivas on March 27, 2012?

A No, I do not.

Q Do you recall the last time that you saw Officer Baboolal on March 27, 2012?

A No, I don't.

Q Do you recall the last time that you saw Sergeant Cruz on March 27, 2012?

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A No, I do not.

Q Do you recall the last time that you saw
Officer McGrath on March 27, 2012?

A No. No, I do not.

Q Do you recall the last time that you saw
Officer Regan on March 27, 2012?

A No, I do not.

Q Do you know if there was any video
surveillance of the area around 621 West 172nd
Street on March 27, 2012?

A I do not know.

Q Did you observe Mr. Alicea, the plaintiff
in this case, resist any efforts to arrest him on
March 27, 2012?

A I do not know.

Q Did you have any physical contact with any
arrested persons on March 27, 2012?

A I don't recall.

Q Do you recall putting handcuffs on any
arrested people on March 27, 2012?

A No, I do not.

Q Do you recall assisting other officers in
handcuffing any other arrested people on March 27,
2012?

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2 A No, I do not.

3 Q Do you recall observing Officer Rivas make
4 any arrests on March 27, 2012?

5 A No, I do not.

6 Q Do you recall observing Officer Baboolal
7 make any arrests on March 27, 2012?

8 A No, I do not.

9 Q Do you recall observing Officers Regan or
10 McGrath make any arrests on March 27, 2012?

11 A No, I do not recall.

12 Q Do you recall observing any arrests take
13 place on March 27, 2012?

14 A No, I do not.

15 Q Did you ever observe Mr. Alicea
16 complaining to anyone that his handcuffs were
17 applied too tightly or were causing him pain on
18 March 27, 2012?

19 A No, I do not.

20 Q Do you recall observing any injured
21 arrestees on March 27, 2012?

22 A No, I do not.

23 Q Did you ever speak to anyone from the
24 district attorney's office on March 27, 2012?

25 A No, I did not.

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2 Q Did you ever speak to any members of the
3 district attorney's office regarding events that
4 happened on March 27, 2012?

5 A No, I don't recall.

6 Q Do you recall anything about the arrest
7 and prosecution of Mr. Alicea on March 27, 2012?

8 A No, I do not.

9 Q Do you regularly keep a memo book for your
10 duties as a police officer?

11 A Yes, I do.

12 Q Did you make any entries in your memo book
13 related to this incident?

14 A No, I did not.

15 Q Did you make any other records anywhere in
16 other paperwork regarding this incident?

17 A No, I did not.

18 Q How would you describe your relationship
19 with Officer Rivas?

20 MR. FARRAR: Objection.

21 A Very good.

22 Q Are you still in touch with him?

23 A Yes.

24 Q Are you still at the 33rd Precinct?

25 A Yes, I am.

1 ARICO

2 Q Are you still a member of the Conditions
3 Unit?

4 A No, I am not.

5 Q Why not?

6 A I am an auxiliary coordinator.

7 Q Is that a promotion or demotion or just a
8 switch?

9 A Just a switch, a lateral move.

10 Q Have you ever had to give any other
11 statements or testimony at any other point regarding
12 any events that happened on March 27, 2012?

13 A No, I have not.

14 Q Do you recall whether Officer Rivas
15 arrested a female on March 27, 2012?

16 A I don't recall.

17 Q Do you recall if any other members of the
18 Conditions Unit arrested a female on March 27, 2012?

19 A No, I do not.

20 (A recess was taken.)

21 Q Officer, have you now told me everything
22 you remember about the events on March 27, 2012?

23 A Yes, I have.

24 (Continued on the following page
25 to accommodate the jurat.)

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Q Have you now told me everything you
remember about the arrest and prosecution of Edmin
Alicea from March 27, 2012?

A Yes, I have.

MS. MASSIMI: Thank you. I have no
further questions.

(Whereupon, the proceedings were
concluded at 12:44 p.m.)

Paul Arico

Subscribed and sworn to before me
this ____ day of _____ 20__.

NOTARY PUBLIC

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WITNESS

EXAMINATION BY

PAGE

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Paul Arico

Ms. Massimi

4-55

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REQUESTS

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DESCRIPTION

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(None)

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INSERTS

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(None)

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E X H I B I T S

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Plaintiff's

DESCRIPTION

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Memo Book Entries

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Memo Book Entries

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C E R T I F I C A T E


STATE OF NEW YORK)
COUNTY OF QUEENS)

I, JOSEPH ADLER, a stenotype reporter and
Notary Public within and for the State of New York,
do hereby certify that:

PAUL ARICO

The witness whose Examination Before Trial
is hereinbefore set forth, was first duly sworn by
me, and that such Examination Before Trial is a true
and accurate record of the testimony given by said
witness; and I further certify that I am not related
to any of the parties of this action by blood or
marriage and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 18th day of January, 2015.



JOSEPH ADLER